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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID LEE McMANUS,

Defendant and Appellant.

2d Crim. No. B219205
(Super. Ct. No. 2008045539)
(Ventura County)

David Lee McManus appeals a judgment following his guilty plea to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) after the trial court denied his motion to suppress evidence obtained from an inventory search of his vehicle. We conclude, among other things, that the impoundment of McManus's vehicle and the inventory search conducted after his arrest for driving without a valid license (Veh. Code, § 12500, subd. (a)) did not contravene his Fourth Amendment rights.¹ We affirm.

FACTS

At 9:00 p.m., on October 30, 2008, Police Officer Paul Walsh was driving his patrol car near the Sheeler Moving and Storage Company in Ventura, California. He

¹ All further statutory references are to the Vehicle Code.

received a report that there had been thefts of gasoline at that company. This was an industrial area and most of the businesses were closed.

Walsh spotted McManus inside a Chevrolet Tahoe which was parked across the street from the moving company. There was no other traffic in that area at that time of night. Walsh approached McManus because he felt it was "suspicious" that McManus parked his car near the area where the thefts occurred. After asking McManus why he had parked there, Walsh asked him whether he was on probation or parole. McManus replied that he was on probation "for DUI and that he was a sex registrant."

Walsh checked McManus's California identification card and discovered that his driver's license had expired. He asked McManus to "step out of [the] car." McManus refused. He did, however, continue to answer Walsh's questions. After Walsh completed filling out the information on a field interview card, he returned to his patrol car.

McManus started to drive away. Walsh testified that he "activated [his] blue and amber lights" because McManus "was now in violation of 12500(a) of the Vehicle Code." Section 12500, subdivision (a) provides that "[a] person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license" Walsh advised McManus that he was under arrest and asked him to step out of the car. McManus refused to comply. Three police officers had to forcibly remove him from the vehicle.

Walsh called a tow company to "impound" McManus's vehicle. Walsh testified, "[I]t's our policy to impound vehicles where people have driver's license violations, including expired licenses" The prosecutor asked, "Is that a 30-day impound generally?" Walsh responded, "Yes, it is."

Prior to the vehicle being towed, Walsh conducted an "inventory search" of the car. He said he found "drugs, pay and owe sheets, and several other items that indicate he was selling narcotics." He conducted the inventory search in compliance with Ventura Police Department procedures.

On cross-examination, Walsh testified he was following police procedure "to always impound a person's vehicle for [section] 12500." He said, "So there was no community caretaking issue. It was a Vehicle Code issue."

The trial court denied McManus's motion to suppress the evidence obtained in the search. The court found that the police had the right to impound the car and "the search was lawful."

DISCUSSION

The Search and Impoundment of McManus's Vehicle

McManus contends that because he was driving with an expired license, the police had no authority to search and impound his car after his arrest. He claims that consequently the court erred by denying his suppression motion and the judgment must be reversed.

"In reviewing a ruling on a motion to suppress evidence, we defer to the trial court's findings of fact, whether express or implied, if those findings are supported by substantial evidence. We independently determine the relevant legal principles and apply those principles in evaluating the reasonableness of the search" (*People v. Mays* (1998) 67 Cal.App.4th 969, 972.)

In determining the validity of the police action of impounding a vehicle and conducting an inventory search, we initially decide whether the police had authority to act and whether "[t]he impoundment decision was reasonable under the circumstances." (*People v. Benites* (1992) 9 Cal.App.4th 309, 326.) We then examine whether the inventory search complied with Fourth Amendment protections.

A. Authority to Impound McManus's Vehicle

McManus contends the police had no authority to impound his vehicle. He claims section 14602.6 authorizes the impoundment of a vehicle after the defendant has been arrested for only "four discrete circumstances": 1) driving with a suspended license, 2) driving with a revoked license, 3) driving with a restricted license (under sections 13352 or 23575) where the vehicle is not equipped with "a functioning, certified interlock

device," and 4) driving "without ever having been issued a driver's license." He argues that his offense of driving with an expired license (§ 12500, subd. (a)) is not included within this section and consequently the impoundment of his vehicle was unauthorized. We disagree.

McManus overlooks section 22651, which provides, "A peace officer . . . may remove a vehicle located within the territorial limits in which the officer . . . may act, under the following circumstances: . . . [¶] . . . [¶] (h)(1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody."

Here McManus was arrested for driving without a valid license and was taken into custody. His arrest falls within this section.

McManus suggests that the Vehicle Code does not specifically authorize the police to remove a vehicle for the offense of driving with an expired license.

(§ 12500.) We disagree. Section 22651, subdivision (p) permits police to remove a defendant's vehicle "for a violation of Section 12500" and to keep it until the defendant presents a "currently valid driver's license to operate the vehicle." Consequently, there was statutory authority for impounding this vehicle. (*People v. Salcero* (1992) 6 Cal.App.4th 720, 723; *People v. Scigliano* (1987) 196 Cal.App.3d 26, 29.)

Even independent of statute, the police have a nonstatutory duty to take care of the property of arrestees which includes their vehicles. (*People v. Scigliano, supra*, 196 Cal.App.3d at p. 29.)

B. Reasonableness of the Impound

McManus contends Walsh was not engaged in this "caretaking" function, but was merely following a local rule that required him to impound cars of drivers arrested for driving with expired licenses. He claims: 1) such impound rules are constitutionally unreasonable, and 2) that a New York Times article shows that such local rules were enacted to generate revenue for "cash-strapped cities."

Standardized procedures authorizing police to impound cars after an arrest for traffic violations are constitutionally permissible, except where they were enacted, or are being used, for the purpose of circumventing Fourth Amendment protections. (*Colorado v. Bertine* (1987) 479 U.S. 367, 372; *People v. Needham* (2000) 79 Cal.App.4th 260, 266; *People v. Salcero, supra*, 6 Cal.App.4th at p. 723; *People v. Scigliano, supra*, 196 Cal.App.3d at p. 29.) McManus did not present evidence to support a claim that the rule he now attacks was being used in bad faith or as a pretext for "a purposeful means of discovering evidence of a crime." (*People v. Benites, supra*, 9 Cal.App.4th at p. 326.) The trial court did not find unlawful police behavior and there was no evidence that the rule Walsh followed was enacted to circumvent the Fourth Amendment. (*South Dakota v. Opperman* (1976) 428 U.S. 364, 376.)

Even if the collection of revenues was a motivating factor for enacting this impound rule, McManus has not shown that the rule as applied to him was unconstitutional. The trial court implicitly found the rule as applied to the facts of this case was objectively reasonable. It said, "There was nobody else to take care of the car. The defendant was going to be booked. And the car was not on a much traveled street. It was nighttime. So it would be subject to being vandalized or stolen, or perhaps gas siphoned out of it." The court noted that even though the officer "apparently didn't exercise any discretion," he "would have had the right to impound the car" and "therefore the search was lawful." McManus has not shown a lack of substantial evidence for the court's findings.

In *Benites*, defendant driver had a suspended license and the passenger did not have a valid one. The car was on "a dark, lonely and isolated stretch of road . . . and the van and trailer could be vandalized if left on the highway." (*People v. Benites, supra*, 9 Cal.App.4th at p. 326.) The Court of Appeal concluded that impounding the car was reasonable and did not violate the Fourth Amendment.

Here, McManus's car was near the site of a business that had experienced a recent theft of gasoline. The area was isolated and it was night. As the trial court found,

there was no one who could watch this unattended vehicle. Under these circumstances, the impoundment was reasonable.

C. *The Inventory Search*

McManus contends the inventory search violated his Fourth Amendment rights. We disagree.

""[I]nventory procedures serve to protect an owner's property"" (*People v. Benites, supra*, 9 Cal.App.4th at p. 326.) Such search procedures serve ""to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger."" (*Ibid.*) As stated by the United States Supreme Court, "The decisions of this Court point unmistakably to the conclusion reached by both federal and state courts that inventories pursuant to standard police procedures are reasonable." (*South Dakota v. Opperman, supra*, 428 U.S. at p. 372.) "[T]he police have a duty to protect a vehicle, like any other personal property, which is in the possession of an arrestee." (*People v. Scigliano, supra*, 196 Cal.App.3d at p. 29.)

McManus argues that Walsh did not exercise any discretion; Walsh simply followed the Ventura police rule which authorized an unconstitutional search. Following uniform rules does not insulate police from constitutional scrutiny, and an inventory search rule may never be used as a pretext to violate the Fourth Amendment. ""[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence."" (*People v. Needham, supra*, 79 Cal.App.4th at p. 266.)

But there is no evidence of such unlawful police conduct here. Walsh testified that the inventory search was conducted for the purpose of documenting the items in the car to protect the department and the towing company from liability in case of a dispute about missing property. He said for "safekeeping we inventory the property." The trial court implicitly found that Walsh was credible. McManus presented no evidence to show that he was disingenuous or that he had an ulterior motive for conducting the inventory search. Walsh's testimony shows that he was only following standard procedures and engaging in a neutral administrative function. Such searches are

consistent with the Fourth Amendment. (*People v. Needham, supra*, 79 Cal.App.4th at p. 266; *People v. Salcero, supra*, 6 Cal.App.4th at p. 723 [inventory search conducted pursuant to departmental policy after an impoundment was valid].) "In the present case, . . . there was no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation." (*Colorado v. Bertine, supra*, 479 U.S. at p. 372.) The trial court properly denied the motion to suppress evidence.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Bruce A. Young, Judge
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